IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2222 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NEEKA TUBES LTD.

Versus

SALES TAX OFICER(I)

Appearance:

1. Special Civil Application No. 2222 of 1992
MR KH KAJI for Petitioner No. 1
MR SIRAJ GORI, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 05/08/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this petition under Article 226 of the Constitution, the petitioner has challenged the notices dated 20.2.1992 issued by the Sales-tax Officer (I), Division 10, Ahmedabad under Section 41 of the Gujarat

Sales-tax Act, 1969 (hereinafter referred to as "the Act") for the years 1983-84 to 1988-89.

2. The notices are challenged on the ground that they are barred by the period of limitation as stipulated in Section 42 of the Act. At the relevant time, i.e. prior to substitution of Section 42 by Gujarat Act 10 of 1994 with effect from 31.3.1994, Section 42, in so far as relevant for the purposes of the present petition, read as under :-

"42. Time limit for completion of assessments.

(1) (a) No order of assessment for a year or part of a year shall be made under sub-section (3) or (4) of section 41 at any time after the expiry of two years from the end of year in which the last monthly, quarterly or as the case may be, annual return is filed.

(aa) Notwithstanding the expiry of the period specified in clause (a), as order of assessment for Samvat Year 2038, calendar year 1982 or, as the case may be, financial year ending on the 31st March, 1983 or part of any such year may be made under sub-section (3) or (4) of section 41 at any time not later than the end of Samvat Year 2042, calendar year, 1986 or, as the case may be, financial year ending on the 31st March, 1987.

(b) ... ...

Provided that for the purpose of this section if it is considered necessary so to do, the State Government may, subject to such conditions as it may deem fit, and the Commissioner may, subject to such conditions as may be prescribed by a general or special order, extend, either generally or specially, the period specified in clause (a).

Provided further that in computing the period of limitation for the purpose of this section, any period by which the period of limitation is extended under the first proviso or any period during which assessment proceedings are stayed by an order or injunction of any court or authority shall be excluded :

Provided further that where a fresh assessment is required to be made in pursuance of any order under sections 65, 67 or 69 or in pursuance of any order of any court or authority such fresh assessment shall be made at any time within three years from the date of such order.

(2) Nothing in sub-section (1) shall apply to any assessment proceedings (including any notice issued) pending immediately before the appointed day."

3. It is submitted by Mr Kaji on behalf of the petitioner that the notices are issued beyond the limitation period of two years from the end of the year in which the last return was filed. Mr Kaji submits that since the petitioner was not served with any order of extension as contemplated by the first proviso to Section 42, there can be no question of extension of the period of limitation.

4. On the other hand, Mr Siraj Gori, learned AGP for the respondents has submitted that, as stated in the reply affidavit, orders of extension were passed. No details are given in the reply affidavit. Reliance is sought to be placed on certain orders alongwith the parawise remarks. One such order dated March, 1988 purports to extend the period of limitation upto 31.3.1989 for the years 1983-84 and 1984-85. Another order dated Nil, 1989 purports to extend the period of limitation upto 31.12.1990 for the years 1984, 1985 and 1986.

However, the learned AGP does not dispute the assertion made on behalf of the petitioner that copies of such extension orders were not served on the petitioner nor was any opportunity of hearing given before passing any such order of extension.

5. We find that for the years 1983-84 and 1984-85, the extension orders passed in the year 1988 and 1989 were issued after expiry of the period of two years from the date of expiry of the year in which the returns were filed. It is only for the year 1988-89 that the notice for assessment was issued within the period of limitation because the two year period begins to run from the end of the year in which the last monthly/quarterly/annaul return is filed. Hence for the year 1988-89, the return would have been filed at the earliest in April/May 1989.

Therefore, upon expiry of that year by 31.3.1990, the two year period would begin to run from 1.4.1990 and expire on 31.3.1992. Since the notice for the year 1988-89 was issued on 20.2.1992, the notice was within the period of limitation for the year 1988-89. For all the other years i.e. for the years 1983-84 to 1987-88, the notice under Section 41 was issued beyond the period of limitation and the extension orders were not served upon the petitioner and were also issued after expiry of the period of limitation. Such extension orders could not be said to have any efficacy so as to have the effect of extending the period of limitation.

6. Even otherwise, in Gujarat Steel Tubes Ltd. vs. Sales-tax Officer, (1998) 110 STC 401, this Court has clearly held that apart from the legal position that the power of the Commissioner to stay assessment proceedings under Section 42 of the Act can be exercised only in extraordinary circumstances and for supervening reasons which cannot be attributed to the default or failure of the assessing authorities, such power read with the power under Rule 37-A of the Gujarat Sales-tax Rules, 1970 may not be exercised by the Commissioner without first giving to the dealer notice to show cause why his assessment proceedings should not be stayed for a stated period. Such notice should set out what the reasons and circumstances are, which according to the Commissioner necessitated such stay, so that the dealer has the opportunity of meeting the same. This requirement of natural justice has to be read in Rule 37-A, having regard to its scope. Mere pendency of the assessment proceedings cannot itself be a ground for staying the proceedings.

7. In view of the aforesaid principles laid down by this Court in Gujarat Steel Tubes Ltd. (Supra), there could be no manner of doubt that the impugned notices issued in February, 1992 for the years 1983-84 to 1987-88 were obviously issued beyond the period of limitation and the question of invoking the provisos to Section 42 would not arise as it is not even the case of the respondent authorities that any extension order was passed after issuing any show cause notice or after giving an opportunity of hearing to the petitioner.

8. On this short ground alone, we quash and set aside the impugned notices for the years 1983-84 to 1987-88. We, however, clarify that the impugned notice for the year 1988-89 was within the period of limitation as stipulated in Section 42(1) of the Act.

9. Rule is made absolute to the aforesaid extent only with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

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